

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	8:03CR290
	)	
v.	)	
	)	
STERLING McKOY,	)	ORDER
	)	
Defendant.	)	
_____	)	

This matter is before the Court on three motions filed by defendant McKoy: Notice of appeal (Filing No. 358), appealing from this Court's memorandum opinion and judgment of August 8, 2007, denying his motions to vacate, set aside or correct his sentence; a motion to reconsider the denial of his pro se § 2255 petition (Filing No. 359); and a pleading entitled "motion to reconsider denial of motion for new trial" (Filing No. 360). This latter motion appeals that portion of the Court's memorandum opinion and order of August 8, 2007, denying several motions defendant had filed for new trial.

The notice of appeal was received by the Court on October 2, 2007, and formally filed on October 5, 2007, so it has been filed within sixty (60) days of the Court's memorandum opinion and order denying his various § 2255 motions and motions for new trial. Accordingly, the Court finds that this notice of appeal is timely filed. See Rule 4(a)(1)(B) of the Federal Rules of Appellate Procedure.

The motions to reconsider the denial of his pro se § 2255 petitions and to reconsider denial of his various motions for new trial were also received on October 2, 2007, and filed October 5, 2007. These motions are clearly out of time and will be denied.

Title 28, United States Code, § 2253 provides that with respect to a proceeding filed pursuant to § 2255, the final order is subject to review on appeal to the Court of Appeals. That section further provides, however, that no such appeal can be taken unless a circuit judge or the district judge issues a certificate of appealability which may issue only "if the applicant has made a substantial showing of the denial of a constitutional right."

The Court has again reviewed the various filings of the defendant and its order of August 8, 2007, and finds that the defendant has not made a substantial showing of the denial of a constitutional right, and accordingly, the Court declines to issue a certificate of appealability. Accordingly,

IT IS ORDERED:

1) Defendant's notice of appeal is deemed timely filed and defendant may proceed on appeal *in forma pauperis*. However, no certificate of appealability will issue from this Court.

2) Defendant's motion to reconsider denial of pro se 2255 petition is denied.

3) Defendant's motion to reconsider denial of motion for new trial is denied.

DATED this 10th day of October, 2007.

BY THE COURT:

/s/ Lyle E. Strom

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LYLE E. STROM, Senior Judge  
United States District Court